

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

THE STATE OF TEXAS,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

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CIVIL ACTION No. 2:23-CV-00055-AM

SECOND SUPPLEMENTAL APPENDIX TO
PLAINTIFF'S NOTICE OF ESCALATING PROPERTY DAMAGE
IN SUPPORT OF ITS EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER OR STAY OF AGENCY ACTION

2S-1	Declaration of Roberto Ortiz Diaz	2Supp. Appx. 001 - 005
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Dated: October 28, 2023.

Respectfully submitted.

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Attorney General of Texas

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 28, 2023, and served on all Defendants via Certified Mail Return Receipt.

/s/ Ryan D. Walters
RYAN D. WALTERS

DECLARATION OF ORTIZ DIAZ

1. My name is Roberto Ortiz Diaz. I am over eighteen years old, I have never been convicted of a felony and I am competent to testify to the matters set forth below.
2. I am a soldier employed by the Texas Military Department (“TMD”). I have attained the rank of Sergeant and I am assigned to Task Force Eagle under Charlie Company. In that role, I currently serve on Special Response Team 3 on Operation Lone Star (“OLS”), as an engineer.
3. I have served in OLS since September 2021. My job duties include patrolling and maintaining my area of operations along the border as part of OLS and inspecting and repairing concertina wire fencing in my area of operations. I currently serve in the vicinity of Eagle Pass, Texas, where I have served for over a year.
4. During my service at the Texas-Mexico border, I have observed that Eagle Pass is an area where large numbers of migrant border crossings through the Rio Grande regularly occur.
5. When TMD soldiers report destruction of, damage to, or a breach in the concertina wire fence, it is my team’s responsibility to return the fence to its proper condition.

6. At 12:26 PM on October 27, 2023, I was on my regular patrol at the Texas-Mexico border near the Rio Grande river, close to the Heavenly Farms Pecan Orchard, when I spotted a telehandler forklift operated by an individual in plainclothes. U.S. Customs and Border Patrol (“CBP”) agents were directing the driver of the telehandler forklift.
7. Additionally, several CBP vehicles were parked at the scene, and I saw media crews that appeared to be following CBP officials near the concertina wire fence. The media crews traveling with CBP personnel appeared to be interviewing migrants who had crossed the border.
8. When I arrived, I observed approximately 10 migrants who had already crossed the river and were standing on the United States side of the Rio Grande. I also observed approximately 50 migrants congregating on the Mexican side of the border across the river. I did not witness any of the migrants in distress and none of the migrants appeared to need medical attention. At no point did I hear any federal or state officers call for medical services.
9. At the scene, I observed CBP personnel directing the individual operating the telehandler forklift. Under the direction of CBP officials, the telehandler operator proceeded to flatten the concertina wire fence to facilitate entry by the migrants crossing the river.

10. For approximately 30 minutes, I observed the telehandler forklift disabling a large section of the concertina wire fence by repeatedly lifting hydraulic-powered pallet forks up and down in order to smash the fence into the dirt.
11. Below are still images taken from the video, which truly and accurately depict this scene on the border on October 27, 2023.



12. While the operator was flattening the concertina wire, I observed no medical emergencies among the migrant crossing the river and I am not aware of any reason for CPB agents to flatten the concertina wire other than to allow an easier entry path for migrants arriving in the United States. After

observing these activities, I resumed my patrol.

13. When I returned to the area twenty minutes later, I saw that 30 to 40 feet of the concertina wire fence had been completely flattened. No CBP employees remained in the area, but three media crews and migrants on both sides of the river were still present.

14. None of the federal personnel at the scene asked for permission from me or, to my knowledge, from any other OLS personnel to disturb the concertina wire barrier. And to my knowledge, no OLS personnel granted CBP permission to disable large sections of TMD's concertina wire fence. As a result of CBP's actions, approximately 40 migrants were able to traverse over the mangled concertina wire and gain entry into Texas illegally.

15. As I understand it, the location of this incident is the same location where CPB agents, the day before, used a telehandler forklift to lift the concertina wire to allow hundreds of migrants to enter the United States. Although I did not witness that incident, I learned of it from fellow soldiers.

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and information.

Signed this 28th day of October 2023.

A handwritten signature in black ink, appearing to read "Robert H. Diaz", followed by a long horizontal line extending to the right.

Roberto Ortiz Diaz

Sergeant

Texas Military Department